(3)

IN THE HONOURABLE HIGH COURT OF CHHATTISGARH :AT BILASPUR.

W.P. 1523 2001.

(PETITION UNDER SECTION 226/227 CONSTITUTION OF INDIA).

Petitioner :- Jai Lal Malekar S/O Kishan Lal
Non-Applicant. Member Janapad, Dondi Lohara, Janpad,
District Durg(Chhattisgarh).

Versus

Respondents :- 1. State of Chhattisgarh,
Through :Secretary : Panchayat,Raipur.
2. Additional Collector, (Panchayat).
Presiding Officer, Durg Distt.
Durg -Chhattisgarh.
3. Returning Officer, Panchayat,
Block Office, Dondi Lohara, Durg (CG).
4. Dilip Sharma S/O Mohan Lal Sharma,
R/O Village - Chilhati, Post- Bharada,
Tahsil Dondi Lohara, Distt. Durg.
(Candidate Janapad Area- No.18).
(Applicant).

WRIT PETITION UNDER ~~XXXXXX~~/ARTICLE 226/227 CONSTITUTION OF INDIA FOR QUASHING THE ORDER PASSED ON 25.07.2001. IN PANCHAYAT CASE NO. -15-A/ 89(15) OF 2000-2001. BY THE ADDITIONAL COLLECTOR (PANCHAYAT) DURG FOR RECOUNTING OF VOTES OF POLLING BOOTH E CENTRE 138 OF JANAPAD PANCHAYAT DONDI LOHARA JANAPAD MEMBER ELECTION2000.

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(57)

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No.1523/2001

Jailal Malekar

Versus

State of Chhattisgarh and Others

Before Hon'ble Mr. W.A.SHISHAK, Chief Justice

Present

None for the petitioner.

Shri Gautam Bhaduri, learned Government Advocate for the respondents No.1, 2 and 3.

Shri H.S.Tripathi, learned counsel for the respondent No.4.

O R D E R

The petitioner won Janpad Panchayat election. Counting of votes took place on 1st and 2nd February, 2000. Results were announced on 3rd February, 2000. The writ petitioner was declared elected.

2. The contention of respondent No.4 is that before the results were declared and when the votes were being counted a request was made for recount pointing out certain irregularities in the counting. The Returning Officer declined to accept the request on the ground that the ballot papers were already in strong room. An election petition was filed before the

Collector. The contention of the respondent No.4 is that because of serious doubts in the counting and recording of votes there is a need to recount the ballot papers to ascertain who actually won the election. The writ petitioner filed written statement before the Collector. After hearing the parties, the learned Collector ordered for recounting. The said order was passed on 25.07.2001 Annexure P-1. and the same has been impugned in this petition.

3. Shri H.S.Tripathi, learned counsel for the respondent No.4 has drawn my attention to a document Annexure R-4 in which the total votes recorded as 530. In the next page i.e. page No.14 of the return another document indicates that there were 524 total votes cast, 19 invalid votes and 505 valid votes. It may be stated that in terms of Annexure R-4, total votes were 530, invalid votes 20 and valid votes 510. According to Shri H.S.Tripathi, when we read these two documents together it is found that six votes have not been recorded.

4. Shri Gautam Bhaduri, submits that after the parties were heard, the learned Collector was of the view that in order to clarify the doubts, the best way was to recount the votes. It is further submitted that such recount will in no way prejudice any of the parties inasmuch as such recount would only reveal the truth of the allegations as regard the valid votes cast in favour of either the writ petitioner or the respondent No.4. It is half an hour since the hearing of this matter began. No one appears to press this petition.

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5. After hearing Shri H.S.Tripathi, learned counsel for the respondent No.4 and Shri Gautam Bhaduri, learned Government Advocate appearing for the respondents ~~No.1~~, 2 and 3, I am of the view that in the interest of justice it is proper to allow recount as ordered by the Collector. In other words in the present facts and circumstances I am not inclined to interfere with the impugned order passed on 25th July, 2001.

6. The petition is accordingly disposed of.

7. Certified copy as per rules.

Sd/-
Chief Justice

21.11.2001

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